learned Deputy contends that the defence must be called on, because on this issue of private defence the onus is on him. I do not think that that follows at all. It is true that in the case of private defence, as in every other case of a general exception to the Penal Code, the burden of establishing the defence lies on the defendant, but it does not at all follow that he need do so out of his own mouth. It is clearly expressed in *Ratanlal* on the "Law of Crimes", 17th edition at page 206, that, although it is for the defence to show the existence of the right of private defence and its proper exercise, this may well be shown by pointing to facts established by the prosecution evidence, and that it need not at all be necessary to call on the accused for the evidence of himself or his witnesses. Although part of the defence depends on the mental attitude, about which the accused could perhaps give more accurate evidence than anyone else, the Court is not only entitled but is under a duty to draw inferences as to the accused's mental attitude from the prosecution's case; and if on consideration of the whole of the prosecution evidence it appears more probable than not that the accused acted properly in exercise of his right of private defence, the Court has no alternative but to acquit him without calling on him for his defence. It may be that if he gave evidence the matter would be much more clearly and satisfactorily disposed of, in the sense that doubtful issues of fact might have cleared up. I am, however, after considerable thought, of opinion that the evidence given for the prosecution makes it appear to me much more probable than not that the accused did act in private defence and did not do so excessively. The accused is accordingly acquitted and discharged.

Accused acquitted and discharged

In re A TAX-PAYER (No. 3)

[A. C. J. (Murray-Aynsley C.J.) August 4, 1955]

[Singapore — District Court Appeal No. 9 of 1955]

Income Tax Ordinance, 1947, ss. 10(1)(a) and (b), 14(1) and 19 — Deductions for depreciation, insurance and road tax — Taxpayer's wife taking employment.

In this case the wife of the taxpayer was in receipt of a salary as an Education Officer, an employment within the meaning of s. 10(1)(b) of the Income Tax Ordinance. When she took this employment it was found necessary to get a second car, which was used for other purposes besides those connected with her employment, and also to hire a piano. The Income Tax Board of Review allowed deductions for depreciation, insurance and road tax in respect of the car, and in respect of the piano they allowed certain deductions. The Crown appealed.

Held: (1) in this case there was evidence to justify the Board's finding in respect of the piano; (2) as the income of the taxpayer's wife is assessable under s. 10(1)(b) nothing could be claimed for depreciation of the car under s. 19 because that section only refers to income assessable under s. 10(1)(a) from the carrying on of a trade, profession or business. It was not a deduction under s. 14(1) because it was not an outgoing or expense; (3) expenses of getting from home to place of employment cannot be deducted. There is no provision in the Income Tax Ordinance which entitles the taxpayer to apportion the cost of insurance or road tax.

INCOME TAX APPEAL.

G. S. Hill (Crown Counsel) for the appellant.

Respondent in person.

Murray-Aynsley C.J.: — In this case the wife of the taxpayer was in receipt of a salary as an Education Officer. The Commissioners have found, and I think they must have found, that this is an employment within the meaning of section 10(1)(b) of the Ordinance. When the wife took up this employment it was found necessary to get a second car. It was also necessary to hire a piano. In respect of these the Commissioners have allowed certain deductions. The Crown appeals.

As regards the piano, I think that there is evidence on which the findings of the Commissioners can be justified and the appeal as regards these deductions is dismissed.

As regards the car, the Commissioners allowed deductions for depreciation, insurance and road tax.

As regards depreciation, it is clear that as income of the wife is assessable under section 10(1)(b) nothing can be claimed for depreciation under section 19 because that section only refers to income assessable under section 10(1)(a) from the carrying on of a trade, profession or business. It is not a deduction under section 14(1) because it is not an outgoing or expense.

As regards the other deductions, it appears that the car was used for other purposes besides those connected with the employment of the taxpayer's wife. Therefore, the sums paid for insurance and road tax were not wholly and exclusively incurred in the production of the income. Further, expenses of getting from home to place of employment cannot be deducted. The only part of the expense of the car that comes within section 14 is for goings other than those from home to place of employment made in the course of duty by the taxpayer's wife. For these mileage was paid. If the taxpayer wants the expenses to be brought into account for tax purposes it can only be on the basis of bringing into account anything received in this way. If the expenses are more than what was received by way of allowances then there may be a deduction. I do not think that strictly speaking there is anything in

the Ordinance which entitled the taxpayer to apportion the cost of insurance or road tax. This point was not argued before me. In any event it could not be more than the costs divided by the fraction of duty mileage divided by total mileage. The findings of the Commissioners do not give any figures as regards mileage. The case must be remitted to the Commissioners for consideration on the lines laid down in this judgment.

There will be no costs of this appeal.

Case remitted to the Commissioners.

PUBLIC PROSECUTOR v. CHIN KIANG YIN

[O. Cr. J. (Thomson J.) February 10, 1956]

[Ipoh — Perak Criminal (Emergency) Trial No. 30 of 1955]

Emergency Regulations, 1951, reg. 4(1)(b) and (2A) — Effect of sub-reg. (2A) on defences under ss. 76 to 106 of the Penal Code — "Without lawful excuse" — "Exception" not to be read as synonymous with "excuse" — Defence of duress.

The accused in this case was charged as follows: "That you, on or about the 23rd day of October 1955, in the vicinity of the perimeter fence of the Tronoh town, in the State of Perak, without lawful excuse, did have in your possession ammunition, to wit, 20 rounds of 12 bore cartridges, without lawful authority therefor, and that you did thereby commit an offence punishable under Regulation 4(1)(b) of the Emergency Regulations, 1951."

There was clear evidence of the possession charged of and the only defence was that of duress.

Held: (1) ss. 76 to 106 of the Penal Code makes it clear that although the Chapter heading is "General Exceptions" the word "exception" is not to be read as synonymous with the word "excuse", and these sections declare no offence is committed in circumstances contemplated by them; (2) regulation 4(2A) does not exclude the availability of the various defences contained in the "General Exceptions" of the Penal Code.

[**Editorial Note:** See also the decision of the Privy Council in **Subramaniam v. Public Prosecutor**, at p. 220 infra.]

Cases referred to:—

(1) *Wong Pooh Yin v. Public Prosecutor* (1954) M.L.J. 189.

(2) *Lim Ah Tong v. Public Prosecutor* (1948-49) M.L.J. Supp. 15.

EMERGENCY TRIAL.

A. P. Jack (Federal Counsel) for the prosecution.

N. Sharma for the accused.

Thomson J. (giving his ruling): — I adjourned this trial yesterday to give myself an opportunity to consider the question of whether the effect of the amendment to Regulation 4 of the Emergency Regulations which is contained in sub-regulation 4(2A) which was published on 3rd January last year is to exclude the various defences referred to in sections 76 to 106 of the Penal Code in cases of this nature and, in particular, whether it has the effect of excluding the defence of duress set out in section 94.

Regulation 4(1)(b) with which we are concerned in the present case is to the effect that any person who without lawful excuse has in his possession any ammunition without lawful authority therefor shall be guilty of an offence and shall on conviction be punished with death.

The words "without lawful excuse" were inserted in the Regulation some time after its original enactment and, in my opinion, it was unfortunate that they were introduced because they have given rise to a great deal of difficulty and confusion. That difficulty came to a head in *Wong Pooh Yin's*[1] case which ultimately went to the Privy Council and it was presumably by reason of what was decided by the Privy Council in that case that sub-regulation 2A was added to the Regulation. It is to the effect that "a person shall be deemed to have lawful excuse for the purposes of this Regulation only if he proves" certain things which are set out one of which is that he acquired the ammunition (or firearm as the case may be) in a lawful manner and for a lawful purpose.

Now, in my judgment, sub-regulation 2A is capable of two meanings according as to where there is a pause and a notional comma. It all depends on whether the pause and the notional comma occur before or after the word "only". If they occur after the word "only" then I think the sub-regulation is clearly to be read as putting a special statutory meaning on the words "lawful excuse" for the purposes of Regulation 4 only. If the pause and comma occur before the word "only" then the effect seems to me to exclude any sort of excuse whatsoever except in the circumstances set out in the Regulation.

On the ordinary canons of construction, I am of the opinion that the first of these two alternative interpretations is to be placed upon the sub-regulation, that is to say, it is to be read as defining the expression "lawful excuse" as it occurs in the Regulation and is not to be taken any further than that.

In the first place, as I have already said, it seems only reasonable to suppose that the sub-regulation was enacted in consequence of the decision of the Privy Council in *Wong Pooh Yin's*[1] case, *supra*. In that case, the Court was concerned with the state of affairs that had no connection whatsoever with the so-called general exceptions contained in the Penal Code.